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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

JONATHAN WILLIAM SALTEKOFF,

Defendant and Appellant.

C080288

(Super. Ct. No. 15F236)

As part of a negotiated plea, defendant Jonathan William Saltekoff pled no contest to attempted kidnapping and admitted a prior strike. He was placed on probation. As a condition of probation, he was ordered to stay away from Bethel Church and Bethel Church activities. On appeal, he contends the trial court abused its discretion in imposing that condition. He argues: (1) the condition is invalid under the *Lent* test (*People v. Lent* (1975) 15 Cal.3d 481, 486); and (2) the condition is overbroad and infringes his constitutional right of religious freedom. As we will explain, we agree that reversal and remand are required based on defendant's second point.

BACKGROUND¹

The victim was a nine-month-old infant. He and his parents were at a restaurant in the early afternoon; the infant was in a stroller next to their table. Defendant came in and sat at an adjacent table. Defendant stared at the infant, smiled, and made faces at him. He seemed “fixated” and “infatuated” with the infant; he completely ignored the parents.

When the infant became fussy, his father took him outside in the stroller and sat with him at an outside table. Several minutes later, the father was momentarily distracted while looking inside the restaurant. In that moment, defendant walked out of the restaurant, grabbed the stroller, and began pushing it away. He moved it two or three feet before the father noticed, stood up, and took back the stroller.

The father took the infant and stroller inside the restaurant. Defendant tried to follow, but a restaurant employee locked the door before defendant could get in.

When police found defendant, he denied taking or even touching the stroller. He did not seem intoxicated but appeared indifferent to what was occurring and what he was being accused of.

Following a trial which ended with a deadlocked jury, defendant pled no contest to attempted kidnapping and admitted a prior serious felony, first degree residential burglary in 2012. The trial court imposed a 10-year six-month sentence consisting of five years six months (half the upper term) for attempted kidnapping (Pen. Code, §§ 664, 207, subd. (b))² and five years for his prior serious felony (§ 667, subd. (a)(1)). The court then suspended execution of sentence and imposed five years of formal probation.

The court orally imposed various probation conditions. One was to have no contact with the victim or his parents. Another was to stay 100 yards away from the

¹ The parties stipulated to a factual basis in the Redding police report. We take the facts from the probation officer’s summary of that report.

² Further undesignated statutory references are to the Penal Code.

grounds of Bethel Church. The minute order for judgment and sentencing combines the requirements into one sentence, requiring from defendant: “That he neither knowingly attempt nor have any contact in any manner with, nor be in the presence of [the victim’s family], Bethel Church, or any Bethel Church events.”

The victim’s family had come to Redding from New Zealand, “specifically to be involved with Bethel Church.” The victim’s father “adamantly expressed [to probation] a desire to have a no contact order for his family as well as Bethel Church or any Bethel events.” He explained, the family spends “most of their time at the church or church events, and they do not want to have to worry about the defendant showing up.”

At sentencing, defense counsel objected to the church condition: “I understand that’s the [victim’s family’s] home church. It is also my client’s parents’ church.” The court responded: “Well, he can’t go there.” Counsel replied: “And just for the record, we’re objecting to that because he does have a freedom of religion, and that is his family’s church.” The court responded: “Well, yes, but for the time being, under these circumstances, he’s going to have to get another church. There are many around. Bethel is a Christian denomination, and there are many you can go to to take its place.” No further details are in the record regarding the degree of defendant’s involvement with that particular church, or the frequency of his attendance, if any.

DISCUSSION

Defendant contends the condition infringes his constitutional right of religious freedom. He argues, under the two-prong *Sherbert* test, the condition (1) imposes a burden on his exercise of religion, and (2) fails to meet any compelling state interest. (See *Sherbert v. Verner* (1963) 374 U.S. 398, 403 [10 L.Ed.2d 965].) He reasons the condition fails to address a compelling state interest and is overbroad because while prohibiting contact with the family is reasonable, prohibiting contact with Bethel Church is not.

We agree that remand is required, because the trial court did not undertake the proper analysis to justify banning defendant from Bethel Church under any and all circumstances. Because the trial court did not undertake the required analysis, the record is insufficient. Further facts and findings are required; thus we reverse the disputed order and remand for the trial court to determine whether the condition meets the strict constitutional standards which we detail below.

When a probation condition limits a constitutional right, a stricter standard applies. (See *People v. Olguin* (2008) 45 Cal.4th 375, 384.) The condition “ ‘must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad.’ ” (*Ibid.*) A probation condition that burdens a constitutional right is permissible only if it is necessary to serve the purposes of rehabilitation and public safety. (*People v. Peck* (1996) 52 Cal.App.4th 351, 362.)

The challenged condition is not a facially neutral law of general application that impacts defendant’s free exercise of religion only incidentally. (See *Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 548 [valid, neutral laws of general applicability do not violate right to free exercise].) Because the record suggests the church condition burdens defendant’s free exercise of religion, we assume it must satisfy the strict scrutiny standard. (*Sherbert v. Verner, supra*, 374 U.S. at p. 403 [10 L.Ed.2d 965].) “Under that standard, a law could not be applied in a manner that substantially burdened a religious belief or practice unless the state showed that the law represented the least restrictive means of achieving a compelling interest or, in other words, was narrowly tailored. [Citations.]” (*Catholic Charities of Sacramento, Inc.*, at p. 562.)

Here, we assume the challenged condition burdens defendant’s exercise of religion, because it bars him completely from going to his family’s church. This bar is in place regardless of whether the victim is present or not. The record supports a restriction on defendant’s occupying the same space as the victim at any given time, but it likely

does not support banning defendant from his family's church *absent the victim's presence there*. Of course, the church *itself* may choose to place limits and restrictions on its attendees. But government restrictions on defendant's free exercise of his religion must be narrowly tailored to support a compelling state interest. The trial court made no such findings here, and the record is not sufficient for us to fill in the gaps.

Although stay away orders routinely include not only the victim but the victim's home and place of employment (see, e.g., *People v. Petty* (2013) 213 Cal.App.4th 1410, 1424 [requiring the defendant to stay 50 yards from the victim's home]; *People v. Jungers* (2005) 127 Cal.App.4th 698, 701-702 [prohibiting contact with victim and going to her home]; *People v. Hall* (1990) 218 Cal.App.3d 1102, 1104, fn. 2 [the defendant was ordered to stay 100 yards from the victim's residence]), here Bethel church is neither the home nor the workplace of the victims. As we have explained, here the paucity of facts in the record regarding the victim's and defendant's connection to the church--as well as the dimensions and operations of the church itself, and whether it is possible that all involved families could worship there but at separate times or at a sufficiently safe distance--require remand, as do the incomplete analysis and findings.³

³ Given our determination of the need to reverse and remand the disputed condition, we need not reach defendant's additional argument that the challenged condition is invalid under the *Lent* test.

DISPOSITION

The challenged condition of probation is reversed and the matter is remanded for further proceedings consistent with this opinion.

/s/
Duarte, J.

We concur:

/s/
Nicholson, Acting P. J.

/s/
Renner, J.